

*Increasing benefits for other
char unit members*

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

_____ :
 KEENE STATE COLLEGE EDUCATION ASSOCIATION, :
 NHEA/NEA :
 :
 Complainant :
 :
 and :
 :
 UNIVERSITY SYSTEM OF NEW HAMPSHIRE, :
 KEENE STATE COLLEGE :
 :
 Respondent :
 _____ :

CASE NO. U-0601:1
DECISION NO. 780028

APPEARANCES

Representing Keene State College Education Association:

David N. Smith, UniServ Director
Sylvia Donahue, Field Coordinator, NHEA/NEA

Representing the University System of New Hampshire:

Arthur P. Menard, Esquire, Counsel
Nicholas DiGiovanni, Esquire, Counsel
Gary Wulf, System Personnel Director

*① Announced new admin.
 level & eliminated dep. eds.
 ② Discarding committee system
 for promotion tenure, etc.
 ③ new benefit schedule*

BACKGROUND

This case arises out of charges brought against the University System of New Hampshire, Keene State College, alleging that the System had committed unfair labor practices. The chronology of events before this Board concerning Keene State College is lengthy and there is no need to restate it here. After the appropriate unit was decided for the faculty at Keene State College and after various challenges were resolved, a preliminary election was held in the Spring of 1977. Following that election, a run-off election became necessary and was scheduled for October 20, 1977. During the summer of 1977, the University System Board of Trustees, acting on increased benefits and pay for University System faculty, increased benefits for faculty as of January 1, 1978, but only for those faculty who 'were not engaged in collective bargaining' (see System Exhibit #6). The run-off election was held October 20, 1977 and still was not conclusive as to a victor. This situation remained in effect until the PELRB was requested by Jere A. Chase, Chairman of the Personnel Committee of the University System Board of Trustees, to certify the Keene State College Education Association, NHEA/NEA, which request was made on February 20, 1978. Such certification was made February 23, 1978 retroactive to October 20, 1977, the date of the election. During the period between the election and the request for certification, the University System Board of Trustees and Personnel Office took several actions. One action was to refuse to bargain with the union pending certification (see letter of Gary Wulf to Sylvia Donahue, Association Exhibit #4).

In addition, the System denied increased pension benefits to Keene faculty since they were deemed to be engaged in collective bargaining (see Association Exhibit #1). Further, the System contacted faculty and denied them the right to participate in trustee committees and the full trustees board since it was deemed inappropriate to continue such a pre-existing practice in light of collective bargaining (see Association Exhibit #9).

After certification, the Administration announced a new administrative level which replaced department chairmen at Keene since the Administration did not feel that the department chairmen could properly perform administrative duties at the same time that they were members of the bargaining unit. In addition, the committee system of dealing with promotion, tenure and other personnel decisions previously used was eliminated. These actions were taken at Keene, testimony indicated, the same changes were not made at the University of New Hampshire, Plymouth State College, or Merrimack Valley College. In addition, the benefits not given to Keene faculty were given to faculty on the other campuses. The funds which would have been used to pay for benefits which were not given to Keene faculty were put in an escrow account by the University System pending resolution of the certification question and pending negotiations between the College and the Association.

The Association has charged unfair labor practices as follows:

- A. Unilaterally denying improvements in the retirement program constituting reprisal and discrimination against faculty for the purpose of discouraging membership in the association and as a unilateral alteration of conditions of employment in violation of RSA 273-A 3.5 (1) (a), (c) and (e).
- B. Unilaterally announcing elimination of department chairmen in reprisal for selection of a union and as discrimination against Keene State College department chairmen in violation of RSA 273-A:5 (1) (a) and (c) and as a unilateral alteration of working conditions and as a willful refusal to abide by the unit determination and certification order of the PELRB.
- C. Unilaterally suspending policies concerning promotions, sabbaticals, awarding of tenure, and appeals for bargaining faculty as a reprisal against Keene faculty for the purpose of discouraging membership in the Association and as a unilateral act, alteration of working conditions all in violation of RSA 273-A:5 (1) (a), (c) and (e).
- D. Unilaterally abolishing the long-standing practice of participation by faculty observers at Board of Trustees meetings and committee meetings as reprisal against Keene State College faculty for selection of a union and as a refusal to bargain in good faith and as a unilateral alteration of working conditions all in violation of RSA 273-A:5 (1) (a), (c) and (e).

The University System responded to those charges by stating that the Association and the College were in fact engaged in collective bargaining after the election so that the System would have been committing an unfair labor practice had it given benefits unilaterally. In addition, the System stated that given the changed set of circumstances following the adoption of collective bargaining and the certification of the union, it was a management prerogative and necessity to eliminate department chairmen, suspend certain personnel rules and previous procedures in order that the situation created by collective bargaining could be complied with and employer unfair labor practices could be avoided. The System denied any anti-union motive or course of conduct.

FINDINGS OF FACT AND RULINGS OF LAW

The Board has considered all the evidence received at the hearings held in this matter on May 10, and June 14, 1978, the briefs submitted by the parties concerning the motion to dismiss and after the hearing. Prior to specific rulings on the specific charges, the Board is constrained to state that the adoption of collective bargaining, clearly the right to employees under RSA 273-A, changes that nature of the relationship between employers and employees and can fundamentally alter the decision-making process in an institution. This is especially true, it appears, in an institution of higher education. The relationship created when collective bargaining is adopted not only must be respected by both employees and employers but also may be insisted on by both employees and employers. The period after the adoption of collective bargaining by the election and certification of an exclusive bargaining representative is a period of sorting out relationships, re-structuring administrations, and otherwise groping for the proper format for the new relationship.

The Board makes the following specific findings on the charges presented.

A. The System was justified in adopting a new benefit schedule for employees not involved in collective bargaining and not adopting such increases in benefits unilaterally for those engaged in collective bargaining for to have adopted increased benefits without negotiating with exclusive representatives would have been an unfair labor practice. Therefore, there was nothing improper in the adoption by the System Board of Trustees of the new benefits with the condition that such benefits not apply to those engaged in collective bargaining. Nevertheless, the faculty at Keene in the summer of 1977 were not engaged in collective bargaining, there having been no final election or any certification. After the election in October, there was still no certification as was recognized by the letter from System Personnel Director Wulf to Sylvia Donahue on November 3, 1977 indicating that the System was unable to negotiate because there was no certification. System Personnel Committee Chairman Chase acknowledged the same situation when he requested certification on February 20, 1978. Since the Union could not have insisted on negotiations and the University might very well have been accused of an unfair labor practice had it engaged in negotiations prior to certification,

faculty members at Keene State College were not engaged in collective bargaining on January 1, 1978. Therefore, to deny them the benefits given all other employees violated RSA 273-A:5 (1) (d) which prohibits discriminating against certain employees. The Board is unable to find based on the record before it, that this action by the University System was part of any intentional plan to encourage or discourage unionization and therefore is unable to find any violation of RSA 273-A:5 (1) (a), (c) and (e). The faculty members should, however, have been granted the increased benefits as of January 1 and those benefits should have continued and should now continue until an agreement is entered into between the employer and the exclusive representative.

B. After the certification of the Union, the University announced the elimination of department chairmen from the administrative structure at Keene State College. Department chairmen have played a large role in the certification process, election, Court cases, Board hearings and the like concerning Keene State College. It has been held by this Board and by the New Hampshire Supreme Court that the administrative functions performed by the department chairmen did not outweigh their other functions as faculty members in such a way as to require exclusion from the bargaining unit (see University System of N.H. v. State 117 N.H. 369 (1977)). No Board decision or Court ruling, however, indicated that the University was required to have department chairmen to perform those administrative duties. Indeed, the statute is clear, in RSA 273-A:1 (xi) that '... managerial policy within the exclusive prerogative of the public employer shall be construed to include but shall not be limited to the functions, programs and methods of the public employer, including the technology, the public employer's organizational structure, and the selection, direction, and number of its personnel, so as to continue public control of governmental functions'. Unless the action taken to replace department chairmen was taken as a reprisal against them because of the election resulting in unionization or for some other prohibited reason, the employer had the right to reorganize its administrative structure as it saw fit. This Board has considered the evidence before it, the fact that administrative structures were being studied over an extended period of time and the fact that the Trustees of the University System felt the need to maintain their administrative functions through personnel outside the bargaining unit and cannot find that the purpose in eliminating department chairmen positions from the organizational structure was an unfair labor practice. The Board therefore finds that the System did not commit an unfair labor practice nor violate the statute in its decision concerning department chairmen. Nevertheless, the System is required to bargain with the exclusive representative over the effects of its decision on the individuals who were formerly department chairmen, namely their work load, pay and benefits and the manner in which they will be returned to full-time faculty status.

C. The Board has considered the charges concerning the unilateral suspending on February 24, 1978 of all policies concerning promotions, sabbaticals, awarding of tenure and appeals for all bargaining unit faculty along with the abolishing on December 1, 1977 of the long-standing practice of participation by faculty observers at Board of Trustees meetings and committee meetings. These charges cannot be sustained.

The Board has indicated above that both parties must respect and both parties may insist on the relationship of exclusive representation by the union created when collective bargaining is adopted. The employer as well as the employee organization may insist that all negotiations concerning wages, hours and conditions of employment be carried on between the employer's representative and the exclusive bargaining representative at the bargaining table. Absent an agreement to the contrary to use an alternative system, the public employer would be subject to an unfair labor practice charge if it sought to make decisions through any process other than collective bargaining. The pre-existing system at Keene State College which involved various policies concerning sabbaticals, awarding of tenure, appeals, committees and the like had not been agreed to at the bargaining table, did not involve a decision making process arrived at under a contract and could not be held by this Board to be in compliance with the relationship established when collective bargaining was selected. This decision does not state nor should it be read to mean that the parties cannot agree at the bargaining table to re-establish the pre-existing system either pending agreement on a contract or in an agreement. Neither should this decision be read to mean that the Board requires that the pre-existing system be re-established. Absent an agreement, however, the parties are required to negotiate, set policies, arrive at decision-making processes, and make decisions through the collective bargaining process and not any pre-existing process. Therefore, the parties are left to their negotiations to establish the system and define it in a contract for promotions, sabbaticals, awarding of tenure and appeals for bargaining unit faculty.

It is the PELRB's understanding that the committees of the Board of Trustees from which bargaining unit employees are excluded are those involving wages, hours, and conditions of employment. If bargaining unit faculty have been eliminated from any other committees of the Board (e. g. Honorary Degrees, etc.), they should be restored to a status equal to that of any faculty at Plymouth State College, the University of New Hampshire or Merrimack Valley College. In addition, this Board notes that any citizen of New Hampshire has the right under the State "Right-to-Know Law", RSA 91-A, to attend open meetings of the Board of Trustees and that Board has no right to exclude faculty from the full Board meetings, except when the Board is meeting in Executive Session.

Finally, the PELRB cannot find on the evidence presented before it that there has been established any connection between various anti-union faculty actions at Keene State College to call for a new election and the actions of the System's administrators causing an unfair labor practice.

ORDER

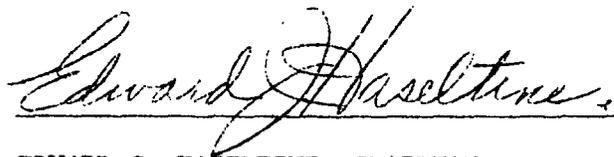
The Board issues the following order:

1. The University System of New Hampshire, Keene State College, is hereby ordered to grant to Keene State College faculty members the same benefits and increases in TIAA-CREF retroactive to January 1, 1978 as were granted to all other faculty in the University System and to continue said benefits (but no subsequent increases which may have been granted after February 23, 1978) pending negotiations between the parties on an agreement to keep or change said benefits. This order shall be effective ten (10) days from the date of the issuance of this order unless the University shall have been notified by the Keene State College Education Association, NHEA/NEA that it desires that the increase in benefits not be granted, in which instance this item shall be negotiable by the parties at the bargaining table and this provision of this order shall be of no further force and effect.

2. The parties are ordered to negotiate concerning the status of those faculty members who were formerly department chairmen including changes in their workload, salary and benefits as a result of their loss of administrative duties, regardless of any time limit stated in any offer to bargain by the University System.

3. The University System Board of Trustees is ordered to restore faculty members to such committees of the Board of Trustees and to allow faculty participation and/or attendance at Board committee meetings of those committees which do not consider terms and conditions of employment, consistent with this decision and equal to the rights of other System faculty to such participation.

Signed: June 28, 1978



EDWARD J. HASELTINE, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Members Present: Chairman Edward J. Haseltine, Board Members Edward L. Allman and Richard Cummings, all concurred.

Member Joseph Moriarty took no part in the consideration or decision of this matter. Member James Anderson took no part in the decision of this matter.